

ISAAC MAYO, EXC'R OF
THEODORICK BLAND

vs.

SARAH BLAND.

DECEMBER TERM, 1851.

[CONSTRUCTION OF WILLS—LEGACIES—LEGATEE—LEGACIES TO A WIDOW—CHANCERY PRACTICE—COMMISSIONS TO EXECUTORS.]

A DEVISE of "all my property real and personal of every description," except certain specified portions, "unto my wife during her natural life" is a general and not a specific bequest.

A devise of "my Bland Air estate, with all the slaves and their increase, which I derived in a course of distribution from my uncle T. F., deceased, and all the personal property thereon, not slaves, and used with the same at the time of my death unto my daughter during her natural life," is a specific bequest.

A bequest of "all my books, historical or biographical, of Greece, of Rome, of Great Britain or Ireland, of the United States, and of the several states, and Rees' Encyclopedia to my son-in-law as a token of my respect for him," is a specific legacy.

A bequest of "all the rest of my books with my household furniture to be preserved by my wife for her own use during her life, as hereinbefore mentioned, or to be sold or given to our children or grand children in such manner and proportions as she may think proper," is a general legacy.

To constitute a bequest of personal estate specific, there must be a segregation of the particular property bequeathed from the mass of the estate, and a specific gift of the separated portion to the legatee.

In case of a deficiency of assets to pay debts, general legacies must be exhausted before the specific legacies can be resorted to for contribution, and this rule prevails though the general legatee be the widow of the testator, where the provisions made for her by the will exceed her common law rights, at least so far as the excess is concerned.

If the provision made for the widow, who abides by the will, does not exceed her common law rights, a general legacy to her will not abate to pay debts in favor of specific legatees, she being considered a purchaser with a fair consideration.

A widow cannot renounce the will as to personalty, and claim the benefit of it as to the realty; she must either renounce the whole or be barred as to both the realty and personalty.

An averment in a bill, "that the property bequeathed to the widow is liable to pay debts" is a sufficient averment, that the benefits taken by her under the will are greater than her legal rights, because such liability depends upon this fact.

The devise of "my Bland Air estate, and all the slaves and personal property thereon, not slaves, and used with the same," passes the crops and produce on the farm, at the time of the testator's death, and also the furniture in the dwelling house standing upon the farm, and used by those occupying it.